IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 596 OF 2001

1. The Administrator of U.T. Of)
Dadra & Nagar Haveli,)
Administrator's Secretariat,)
P.O. Silvassa - 396 230.)
)
2. Union of India,)
Through The Secretary,)
Ministry of Home Affairs,)
Central Secretariat, North Block,) ....Petitioners.
New Delhi.

V/s

1. R.S. Suthar)
2. B.L. Patel)
3. N.P. Shah)
4. R.K. Kapdi)
5. V.D. Godse)
6. B.M. Solanki)
7. T.S. Sharma)
)
All Surveyors, Department of)
Forest, Survey & Land Reforms,)
Dadra & Nagar Haveli, Silvassa) ....Respondents.

Mr. R.M. Agarwal for Petitioners.

Mr. S. Ravi for Respondent No. 1 to 7.

ALONGWITH
WRIT PETITION NO. 5460 OF 1999

1. The Administrator,)
Union Territory of)
Dadra & Nagar Haveli,)
Silvassa - 396230)
)
2. Animal Husbandry and)
Veterinary Officer,)
Dadra & Nagar Haveli,)
Silvassa - 396230)
)
3. The Collector,)
Dadra & Nagar Haveli,)
Silvassa - 396230)
)
4. Union of India,)
Through Ministry of)
Home Affairs,)
Central Secretariat,)
North Block, New Delhi) ...Petitioners.

V/s

1. D.R. Vyas,)
2. A.S. Patel,)
3. M.D. Jawalia,)
4. M.I. Kureshi,)
5. S.C. Solanki,)
6. N.M. Parmar,)
7. K.N. Dhodia,)
8. N.D. Bhandari,)
9. M.C. Ahir,)
10. N.L. Sanvar,)
11. M.C. Patel,)
12. H.T. Patel,)
13. A.B. Patel,)
)
All Stockmen, Dadra & Nagar)
Haveli.) ....Respondents.

Mr. R.M. Agarwal for Petitioners.

Mr. S. Ravi with Mr. H.E. Palve for Respondent Nos. 6 to 10, 12 & 13.

CORAM: **H.S. BEDI, C.J.,** &
V.M.KANADE, J.

DATE : **OCTOBER 6, 2006**

ORAL JUDGMENT (Per V.M. Kanade, J.)

1. The Petitioner No.1 - Administrator of Union Territory of Dadra Nagar Haveli and the Petitioner No.2 - Union of India have filed these two Writ Petitions, challenging the Judgments and Orders passed by the Central Administrative Tribunal whereby the Tribunal was pleased to allow both the Original Applications and thereby held that the Respondents were entitled to the pay-scale of Surveyor and Veterinary Assistant respectively in their Original Application on the principle of equal pay for equal work. Against the said Judgments and Orders passed by the Tribunal in the two Original Applications filed by the Respondents, the Petitioners have preferred a Writ Petition No. 5460 of 1999 in this Court and it was admitted on 3rd February, 2006 and interim relief in terms of prayer clause (b) was granted.

FACTS:

2. The Respondents in Writ Petition No. 596 of 2001 were

appointed as a Surveyors in the Administration of Union Territory of Dadra and Nagar Haveli by Order dated 19th June 1987 in the pay-scale of Rs 950-1500 plus other usual allowances. The case of the Respondents was that they had passed their matriculation and had completed two years course of Surveyors of I.T.I. and this was the qualification which was prescribed in the Recruitment Rules dated 20th December, 1978. It was their case that their pay-scale was wrongly fixed at Rs 950-1500 and they should have been given the pay-scale of Rs 1200-2040 which was in existence in the adjoining Union Territory of Daman and Diu and the persons who had similar qualification and who performed same duties and responsibilities in the Union Territory of Daman and Diu were given the same pay-scale of Rs 1200-2040.

3. The grievance of the Respondents i.e the original applicants was that this was clearly in breach of Articles 14, 16(1) as well as Article 39(d) of the Constitution and it was against the doctrine of equal pay for equal work. The original applicants, in support of their submissions, relied

upon the Notification which was issued by the same Administrator for Dadra and Nagar Haveli and for Daman and Diu. They also relied on the Recruitment Rules for the post of Surveyors of Union Territory of Goa, Daman and Diu. They relied on the similar instances where equal pay for equal work was given to the employees in Dadra and Nagar Haveli who were given the same pay-scale as was applicable to Union Territory of Daman and Diu.

4. The case of the Respondents in Writ Petition No. 5460 of 1999 is also similar. It was their case that they were working as stock-men in Union Territory of Dadra and Nagar Haveli and duties and responsibilities of the said posts were entirely identical with those of the posts of Union Territory of Daman and Diu and, therefore, they were entitled to the same pay-scale.

5. The Tribunal allowed both the Applications filed by the Respondents by its Judgment and Order passed in each of the Applications and directed that the original Respondents in Writ Petition No. 596 of 2001were entitled to the pay-scale

of Rs 1200-2040 with effect from 1st September, 1996 and that their pay should be fixed at appropriate stage in their new pay-scale and they should be paid arrears from 1st September, 1996 in the new pay-scale. The Tribunal further directed that they were entitled to all consequential benefits available. The Tribunal further directed that the Respondents should comply with the order within four months. Review Petition filed by the Union was dismissed. In the other Original Application which is a subject matter of Writ Petition No. 5460 of 1999, an identical order was passed by the Tribunal directing that the applicants should be given the pay-scale of Rs 1200-2040 with effect from 1st September, 1994 and to give all consequential benefits on the basis of the 5th Pay Commission Report and a further direction was given that this direction should be complied with within a period of four months.

6. Being aggrieved by the aforesaid Judgments and Orders passed by the Central Administrative Tribunal, the Administrator of Dadra and Nagar Haveli and the Union of India have filed these two Writ Petitions, challenging the

aforesaid two Judgments and Orders.

SUBMISSIONS:

7. The learned Counsel appearing on behalf of Petitioners submitted that in one case the post of Veterinary Assistant of one territory was equated with the stock-man of another territory and in the second case equality was granted to the Assistant Surveyor qua the Officials of another territory and, accordingly, the pay-scales were prescribed. He submitted that equal pay has been granted to Petitioners on the hypothesis and assumption that both the posts are equal, though they are from different territories. He submitted that the Apex Court has ruled that equal pay was not a fundamental right but it was an object which was to be reached where both parties which were similarly situated in all respects were entitled to get the benefit as enshried in Article 39(d) of the Constitution of India. He relied on number of judgments of the Apex Court and submitted that the order passed by the Tribunal was patently illegal. He submitted that it was not the duty of the Tribunal to issue a writ of

mandamus, directing that the pay-scales should be granted to the applicants in the Original Applications as this was a duty of the Pay Commission which alone could consider the objections, pros and corns and other aspects and consider whether parity in pay-scales should be granted or not. He submitted that even if the Court comes to the conclusion that there was a substance in the contentions of the original applicants, even then, at the most, it could direct the concerned Authority to examine the case and consider whether parity of pay-scales should be granted or not. He submitted that the said judgment would have far reaching repercussions as the Government Servants in all the seven Union Territories would have to be given the same pay-scales though thereis a vast difference in their cadres and nature of duties. In support of the said submissions, he relied upon the judgments in the following cases:-

1. M.B. Majumdar V/s Union of India	(1990) 14 ATC 804
2. Union of India V/s P.V. Hariharan & Ors	JT 1997 (3) S.C. 569
3. State of Haryana & Ors V/s Jagat Singh & Ors	1999 AIR SCW 1698
4. State of Bihar & Ors. V/s Secretariat Press Ministerial Staff Union & Ors.	2002 AIR SCW 2228
5. State of Haryana Vs. Charanjit Singh	2006(1) ALL MR SC 115

1. M.B. Majumdar V/s Union of India	(1990) 14 ATC 804
6. Secretary, Finance Dept. V/s West Bengal Registration Service Asso.	1993 Supp(1) SCC 153
7. Prabhat Kiran Maithani V/s Union of India	(1977) 2 SCC 365
8. State of U.P. V/s J.P. Chaurasia	(1989) 1 SCC 121

8. The learned Counsel appearing on behalf of Respondents, on the other hand, submitted that the Tribunal had given cogent reasons while allowing the Original Applications and that there was no error of law apparent on the face of record and the Orders passed were not perverse or manifestly illegal and, as such, it was not necessary to interfere with the orders which were passed by the Tribunal. He invited our attention to the Notifications which were issued by the Administrator and pointed out that there was one Administrator for two Union Territories and that the same person had issued the Notifications. He further pointed out that the nature of duties and responsibilities and educational qualifications of the two posts in the two Union Territories were identical. He relied upon the judgments in the following cases:-

1. Randhir Singh V/s Union of India and Ors.	(1982) 1 SCC 618
2. Purshottam Lal and Others Vs. Union of India & Anr	1973 SCC (L & S) 337
3. Mahatma Phule Agricultrual University & Ors V/s Nasik Zilla Sheth Kamgar Union and Ors.	(2001) 7 SCC 346
4. South Malabar Gramin Bank V/s Coordination Committee of South Employees' Union and South Malabar Gramin Bank Officers' Federation and Ors.	(2001) 4 SCC 101
5. Alvaro Noronha Ferriera and Anr. V/s Union of India and Ors.	(1999) 4 SCC 408.

9. Before we decide the rival contentions, it would be essential to recapitulate briefly the facts. Respondent in Original Writ Petition No. 596 of 2001 Shri R.S. Suthar was appointed as a Surveyor in the Administration of Union Territory of Dadra and Nagar Haveli by order dated 19th June, 1987 in the pay-scale of Rs 950-1500. The applicant had passed his matriculation and had completed two years of Course of Surveyors of I.T.I. This qualification was prescribed in the Recruitment Rules dated 20th December, 1978. It was submitted that prior to coming into force of the pay-scales recommended by the 4th Central Pay Commission i.e. prior to 1st January, 1986, the Surveyors working in the adjoining Union Territories of Daman and Diu were given the pay-scale of Rs 330-560. All the five types of Surveyors were

given the same pay-scale. However, after the recommendations made by the 4th Central Pay Commission were accepted by the Administrator of Union Territories of Goa, Daman and Diu, the higher pay-scale of Rs 1200-2040 was made applicable to all the Surveyors. Respondents in Writ Petition No. 5460 of 1999 were appointed in the Department of Animal Husbandry. It was under the administration of Union Territory of Dadra and Nagar Haveli at Silvassa. They were appointed in the post of stock-man and the certificates were issued from the same Institution to the trainees viz one of Union Territory of Daman and Diu. It was submitted that the educational qualification prescribed for the post of stock-man in the Union Territory of Dadra and Nagar Haveli and as prescribed in Daman & Diu for the similar post which was known as Veterinary Associate was the same and only the nomenclature was different. However, Respondents - Original Applicants were not paid the same salary as was given to the Veterinary Assistants by the Union Territory of Daman & Diu. It was further alleged that the Administration of Dadra and Nagar Haveli8 had acted arbitrarily and in violation of fundamental rights of the

applicants enshrined in Articles 14, 16(1) as well as Article 39(d) of the Constitution of India and, as such, had violated the right of euqal pay for equal work.

FINDINGS & CONCLUSION:

10. In the light of all these facts, it will have to be seen whether Respondents - Applicants had made out a case for grant of reliefs as prayed for and granted by the Central Administrative Tribunal. Before we consider the rival submissions on merits, it will be essential to take into consideration the judgments on which reliance is placed by the Counsel appearing on behalf of either side.

11. The learned Counsel appearing on behalf of Petitioners relied upon the judgment in the case of M.B. Majumdar (supra). In the said case, a judicial member of the Central Administrative Tribunal claimed that in the judgment of the Supreme Court in S.P. Sampath Kumar Vs. Union of India reported in (1987) 1 SCC 124, the Chairman of the Tribunal

was equated with the Chief Justice of our High Court and the Vice Chairman and the Members were equated with the sitting Judges of the High Court in all respects. It was contended that while Vice Chairman had been equated with the sitting Judges of the High Court, the members had not been so equated in their pay and other conditions of service. Considering the said contentions, the Supreme Court held that equality claimed by the members of the Administrative Tribunal with the Judges of the High Court or even Vice Chairman of the Tribunal in the matter of pay and age of superannuation did not exist since it was contrary to the pattern and scheme of the parent statute establishing the Tribunal and, therefore, rejected the contentions of the Petitioners.

In the case of P.V. Hariharan (supra), the Tribunal had fixed the pay-scale of Respondents in the category of DC to C. The Supreme Court set aside the order of the Tribunal and held that the Tribunal should not interfere with the pay-scale as it was a serious matter and the pay-scales were fixed by the Government on the recommendations of the Pay

Commission and there was no justification for interfering with the pay-scales.

In the case of Jagat Singh & Ors (supra), the Supreme Court observed that though it was brought to the notice of the High Court that there was vital difference in the matter of discharge of duties between the two Cadres, the High Court had ordered parity. The Apex Court in the said judgment observed that it was not for the High Court to suggest such way out when the pay-scales were fixed by the

Government after consulting the expert body.

In the case of Secretariat Press Ministerial Staff Union & Ors (supra), again the Supreme Court observed that when the question of pay-scale and pay benefits arises, the recommendations of the Pay Commission were relevant.

In the case of State of Haryana V/s Haryana Civil Secretariat Personal Staff Assn. Reported in 2002 AIR SCW

2896, the Supreme Court observed that equal pay for equal work was not a fundamental right of the employee but only a constitutional goal to be achieved by Government and it further held that pay fixation and pay-parity was a complex matter having far reaching impact on the State Administration and, normally, the Court should not interfere with the Government decision unless it is patently irrational. Even in such cases where it comes to the conclusion that the Government decision was patently irrational, the Court should avoid giving directions to Government to pay a particular pay-scale and, finally, in the case of J.P. Chaurasia (supra), the Supreme Court, after considering the catena of cases, observed that the application for equal pay for equal work requires consideration of various dimensions of a given job, accuracy required and the dexterity that the job may entail may differ from job to job and, therefore, it could not be judged by the same value of work as there may be qualitative difference as regards the reliability and responsibility. It further observed that the functioning may be the same but the responsibility may make difference and, therefore, normally, applicability of this principle must be left

to be evaluated and determined by the expert body.

Similarly, in the case of Prabhat Kiran Maithani (supra), the Supreme Court has observed as under:-

> ".....We are afraid this is a matter which lay entirely within the sphere of the functions of the Pay Commission. This Court cannot satisfactorily decide such disputed questions on the slender material on which the learned counsel for the petitioner relies in order to displace what appears to us to be, prima facie, the effect of the Report of the Third Pay Commission of 1973....."

Similarly in the case of J.P. Chaurasia (supra), the Supreme Court has reiterated this observation and has observed that the equation of posts and equation of pay must be left to the Executive Government and it must be

determined by the expert body like Pay Commission who would be better suited to judge and evaluate nature of duties and responsibilities of the posts and, lastly, in the case of Secretary, Finance Department (supra) the supreme Court has further reiterated its earlier observations more particularly in para 12 of the said judgment. In our view, the ratio of the said judgment squarely applies to the facts of the present case.

12. In the present case, it has to be seen that though there is one Administrator, the territories in question are different and, therefore, the Original Applicants cannot rely on the fact that there is only one Administrator for the Union Territories and that he issued all Notifications under his name and signature. The fact remains that these two Union Territories are different and no recommendation was made by the 4th Pay Commission to increase the pay-scale of Respondents - Original Applicants herein. The Pay Commission was very well aware of all these facts and, yet, it chose not to increase the pay-scales of the present Respondents/Original Applicants. That being the position, in

our view, it was not proper on the part of the Tribunal to evaluate the factual aspects. It has lost site of the fact that it is the duty of the Original Applicants to establish and to substantiate their claim of equal pay for equal work. Apart from relying on the Notifications which were issued by the same Administrator and the Rules which prescribed the same qualification for the two posts, there is no material to indicate that the nature of work is identical and that the volume of work undertaken by the concerned persons in two different Union Territories is the same. The ratio of the judgments referred to hereinabove, therefore, has not been taken into consideration by the Tribunal while allowing the Original Applications filed by Respondents/Original Applicants. The submissions made by the learned Counsel appearing on behalf of Petitioners, therefore, will have to be accepted.

13. On the other hand, the learned Counsel appearing on behalf of Respondents relied on various judgments. In the case of Randhir Singh (supra), the lower pay-scale was given to drivers in Delhi Police Force than those in Delhi

Administration and the Central Government and the Supreme Court, in this case, directed the Respondents to fix the pay-scale of the Petitioner and the drivers/constables of Delhi Police Force on par with the drivers of the Railway Protection Force. The facts of the said case were entirely different and the ratio of the said judgment, therefore, will not apply to the facts of the present case. In the present case, Respondents were working in different Union Territories and merely because their qualification and eligibility criteria and the Administrator of two Union Territories was the same that alone would not be a ground for granting the same pay-scale. In the present case, the facts do not disclose that Respondents were working in different Departments of the same Government. In fact, there are seven Union Territories and each of the Union Territories is located at various places and the nature of work and responsibility and other factors in each Union Territory is different. If the arguments of the Respondents were to be accepted then all the employees working in all Union Territories would have to be given the same pay-scale. This submission of the learned Counsel appearing for

the Respondents, therefore, cannot be accepted.

The learned Counsel for Respondents then relied upon the judgment of the Supreme Court in the case of Purshottam Lal and Ors (supra). In the said case, a recommendation was made by the Second Pay Commission and it was applicable to all the Central Government Employees. However, the employees of Forest Research Institute were given the revised pay-scale from 1962 while other employees were given the revised pay-scale from 1959. The Supreme Court in the aforesaid facts held that it could not be said that the Report of the Second Pay Commission did not deal with the case of the Petitioners as the Reference of the Pay Commission was wide and that if any category of Government Servants was excluded, material should have been placed before the Court. Again, the ratio of the said judgment will not apply to the facts of the present case. In the present case, on the contrary, though Third Pay Commission recommendation was made to increase the salary and pay-scale of employees of Daman and Diu, no such recommendation was made in respect of

the employees of Dadra and Nagar Haveli.

In the case of Mahatma Phule F. Agricultrual University and Ors (supra), the question was regarding pay fixation of daily wagers in the Agricultural Universities in the State of Maharashtra. In the said case, industrial dispute had been raised by about half the total number of daily wagers of Agricultural Universities in Maharashtra, which was referred to the Industrial Tribunal which, in turn, fixed their daily wages at 1/30th of monthly basic starting wages and dearness allowance of permanent employees. In these circumstances, the Supreme Court held that the remaining daily wagers also were entitled to get the same wages, applying the principle of equal pay for equal work. The facts situation in the above case also is entirely different. The Industrial Tribunal having awarded certain wages to certain employees, the Supreme Court held that the other employees who had not approached the Court or had not made a Reference were equally entitled to get the same wages on the principle of equal pay for equal work. This ratio, therefore, will not apply to the facts of the present

case.

In the case of South Malabar Gramin Bank (supra), the Supreme Court held that the Central Government was duty bound to maintain the parity with the pay-structure of the employees of the Nationalised Commercial Banks and that the financial capacity of the Bank was not a relevant factor while taking the decision. Here again, the facts of the said case are entirely different and, therefore, the ratio of the said judgment will not apply to the facts of the present case.

Finally, the learned Counsel appearing on behalf of Respondents relied upon the judgment in the case of Alvaro Noronha Ferriera and Another (supra). In this case, Judicial Officers of erstwhile Union Territory of Goa made a grievance that when the scale of pay of their counter-parts in Union Territory of Delhi was increased, they were not given the same pay-scale, though they were working in the same Cadre in the Union Territory of Goa. The Division Bench of the High Court negatived the contentions of the Judicial Officers. The Supreme Court, however, accepted the

contentions of the Judicial Officers and directed the Union of India to disburse the arrears of pay to the appellants calculating their scale of pay on par with their counter-parts in Union Territory of Delhi during the period between 1/3/1982 to 31/3/1987.

Before appreciating the ratio laid down in the said case, it is necessary to take into consideration the facts of the said case. The territories of Goa, Daman and Diu were liberated on 20/12/1961, The appellants were District Judges posted in Union Territory of Goa. The pay-scales of Judicial Officers in the Union Territories were the same. In 1982, the Union Territory of Delhi increased the pay of such judges to 2000-3200, while their counter-parts were not given any increase to keep the scale on part with the former. On 30/5/1987, Goa became a separate State from Union Territory. The grievance of the Judicial Officers was confined to the period viz. 1/3/1982 and 31/3/1987. The Supreme Court, while allowing the contentions of the Judicial Officers, has observed in para 12 of its judgment as under:-

"12. One admitted fact which looms

large is that till hike in the pay scale was brought about in 1982 for Delhi Judges the parity maintained as between the Union Territories of Goa and Delhi applied to the same cadre of judicial officers. Nobody doubted till then that the nature and dimension of work discharged by the officers of the same cadre of judicial officers at two different Territories were different from any perceptible standard. It is for the contesting respondents to show that there was change in the nature of work which necessitated the Government to keep two different levels of pay to the same officers working at two different places."

"13. Pay Scale of District and Sessions Judges in the Union Territory

of Goa was made on a par with that of Delhi by means of the rules and regulations formulated by the Central Government in exercise of the powers conferred on it by the provisions of "the Goa, Daman and Diu (Absorbed Employees) Act, 1965". The change was effected in 1982 on the premise that the judicial officers in Delhi were upgraded as Class I officers and since the Union Territory of Delhi was declared a metropolitan city, the pay scales were equated with the pay scales of judicial officers in other metropolitan cities. We are not against revision of the pay scales of the judicial officers in the Union of Delhi on the basis of any justifiable grounds. But in doing so the pay scales of their counterparts working in other Union Territories cannot suffer."

It has to be noted that in these peculiar facts and circumstances, the Supreme Court directed the Union of India to pay the same pay-scale of pay between 1/3/1982 and 31/3/1987. In the present case, however, the facts are different and Respondents/Original Applicants cannot claim that they were treated on par at any point of time. On the contrary, the 4th Pay Commission did not consider it fit to make recommendation in favour of these Respondents, while on the other hand, recommendation was made to give increased pay-scale to the Surveyors working in Daman and Diu and Veterinary Assistants from the same place. The Tribunal, therefore, in our view, clearly erred in allowing the Applications filed by the Respondents and directing the Union of India to pay the same pay-scales with retrospective effect. It has to be noted that equal pay for equal work is not a constitutionally proclaimed fundamental right. However, the Supreme Court has evolved the principle on combined interpretation of Articles 14 and 39(d) and also the preamble of the Constitution and came to the conclusion that principle of equal pay for equal work could be inferred from the

constitutional provisions and was applicable in cases of unequal scales of pay of employees, though doing the identical work. At the same time, however, the Supreme Court in catena of cases has observed that fixation of pay scales is a function of an executive and the executive works on the recommendation of the Pay Commission. The Tribunal, therefore, ought to have directed the Government to consider the representation of the Respondents/Original Applicants. In the present case, 6th Pay Commission has been established and the we are of the view that Respondents/Original Applicants are entitled to make their representations to the Pay Commission and voice their grievances so that the Pay Commission may consider the representations made by them.

14. Accordingly Rule is made absolute in both the above Writ Petitions. The Judgment and Order passed by the Tribunal in two Original Applications is set aside. Respondents/Original Applicants may make representations to the 6th Pay Commission which may consider their grievances and make recommendations accoridnglyt. Both the Writ Petitions are allowed in the above terms. Under the

circumstances, there shall be no order as to costs.

CHIEF JUSTICE

V.M. KANADE, J.